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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,419	12/15/2003	Johannis Gillissen	01901- P0005A	3982

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ST. ONGE STEWARD JOHNSTON & REENS, LLC  
986 BEDFORD STREET  
STAMFORD, CT 06905-5619

EXAMINER
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BUECHNER, PATRICK M

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/736,419

Applicant(s)

GILLISSEN ET AL.

Examiner

Patrick M Buechner

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 1-6,8 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/6/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in EPO on 6/15/2001. It is noted, however, that applicant has not filed a certified copy of the 01202277.8 application as required by 35 U.S.C. 119(b), see also MPEP 1895.01 II.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 12/6/04 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p). However, since applicant authorized charges to the deposit account for any fees (see paragraph 4, page 2 of the extension of time request filed 12/2/2004), the fee set forth in 37 CFR 1.17(p) has been charged and the IDS has been considered.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-6, 8, and 10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 6, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/10910 in view of Arnold (US 5,947,340).

WO 00/10910 discloses a spray device for dispensing a pharmaceutical fluid comprising a main body (20) and an actuator (30) movable relative to the main body. WO 00/10910 also discloses the actuator having an actuation surface to support a thumb (Figure 3) and inherently capable for supporting two thumbs (Figure 3), since it is shown that one thumb does not cover the entire surface (Figure 3) and leaves plenty of room for a second thumb. WO 00/10910 also discloses two grips (32) extending from the main body with sufficient room beneath for accommodating one or more fingers (Figure 3). WO 00/10910 also discloses the grips have concave surfaces (Figure 3). WO 00/10910 also discloses guiding features (Figure 3) in that the portion (24) of the grips extends parallel to the actuator (30) and guides an upper surface of the actuator (30) see Figure 3. WO 00/10910 inherently discloses the center of gravity of the device is located in the lower half of the dispenser (Figure 2). WO 00/10910 discloses a pharmaceutical fluid (page 1, line 9) and the limitation “preferably for treating rheumatoid arthritis” is an intended use and carries no patentable weight.

WO 00/10910 does not disclose the actuation force to be used, but does recognize that arthritics may have difficulty operating these types of devices (page 2, lines 1-5), so one of ordinary skill in the art would look to the prior art to determine appropriate actuation forces.

Arnold teaches a pump that has an actuation force of less than about 44.5 N and preferably less than 31.1 N (column 5, lines 2-4 and column 9, lines 38-42).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the actuation force taught by Arnold in the device of WO 00/10910

Art Unit: 3754

since higher actuation forces can cause fatigue for even the most physically adept person (Arnold column 2, lines 10-13) and the device of WO 00/10910 is intended to be used by the elderly and arthritics.

6. Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/10910 in view of Arnold as applied to claim 1 above, and further in view of Hutson (US 5,588,564) as evidenced by Vandromme (US 5,253,788).

WO 00/10910 in view of Arnold discloses all the limitations of claim 3, as discussed above in 5, with the exception of the radius of curvature of the edge along the actuation surface and/or the top edge of the grips is in excess of 3 mm.

Hutson teaches a pump dispenser having a radius of curvature of the edge along the actuation surface in excess of 3 mm (as discerned from Figure 1 and the relative size of the thumb and edge shown).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the existing curve of the edge along the actuation surface of WO 00/10910 in view of Arnold with a radius of curvature in excess of 3 mm as taught by Hutson.

Vandromme discloses that it is desirable to have gently curved surfaces to facilitate handling and actuation by the user (column 4, lines 24-28), so providing the existing curve of the edge along the actuation surface of WO 00/10910 in view of Arnold with a radius of curvature in excess of 3 mm would facilitate handling and actuation by the user.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/10910 in view of Arnold as applied to claim 1 above, and further in view of von Schuckmann (US 6,189,739).

Art Unit: 3754

WO 00/10910 in view of Arnold discloses all the limitations of claim 4, as discussed above in 5, with the exception of a recess in the actuation surface for the user's thumb.

Von Schuckmann teaches a pump dispenser having a recess (Figure 1) in the actuation surface (17) for the user's thumb.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the device of WO 00/10910 in view of Arnold with a recess as taught by von Schuckmann, since it is well recognized in the art that such a recess will help to keep the user's thumb from slipping off of the actuation surface.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/10910 in view of Arnold as applied to claim 1 above, and further in view of Ritsche (US 6,364,166).

WO 00/10910 in view of Arnold discloses all the limitations of claim 5, as discussed above in 5, including the body having an oblong portion (38) but does not disclose the cross section of the actuator is oblong.

Ritsche teaches an oblong actuator (80) fitting into an oblong body (15).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide a matching oblong actuator for the oblong body disclosed in WO 00/10910 in view of Arnold since Ritsche teaches such a shape, WO 00/10910 discloses spray bottles/actuators come in a variety of shapes (page 1, line 5) and the oblong shapes taught are art recognized to be more ergonomic than traditional cylindrical shapes.

***Allowable Subject Matter***

9. Claim 9 is allowed.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (571) 272-4923. The examiner can normally be reached on 6:30am-5:00pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**MICHAEL MAR  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**